



October 16, 2025

To: Town of Brookhaven Planning Environment and Land Management
Suffolk County Department of Health Services
MJK Architect, PLLC

From: Tara Murphy, Environmental Planner

RE: **Klein Core Preservation Area Hardship Waiver**
608 Middle Country Road, Middle Island, Town of Brookhaven
SCTM # 200-402-1-18.12

Enclosed please find a copy of the decision adopted by the Central Pine Barrens Commission on October 15, 2025 for the referenced project.

Timothy C. Hubbard
Member

Maria Z. Moore
Member

Daniel J. Panico
Member

Edward P. Romaine
Member

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Westhampton Beach, NY
11978

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Central Pine Barrens Commission
Meeting of October 15, 2025

Adopted Resolution
Klein Core Preservation Area Hardship Waiver
608 Middle Country Road, Middle Island, Town of Brookhaven
SCTM # 200-402-1-18.12

Present:

Ms. Juengst, for the Suffolk County Executive
Ms. DiBrita, for the Brookhaven Town Supervisor
Mr. Charters, for the Riverhead Town Supervisor
Ms. Moore, Southampton Town Supervisor

I. The Project

Timothy C. Hubbard
Member

Maria Z. Moore
Member

Daniel J. Panico
Member

Edward P. Romaine
Member

Robert Klein (the Applicant) owns property located at 608 Middle Country Road in Middle Island, in the Town of Brookhaven within the Core Preservation Area of the Central Pine Barrens. The 0.44 acre property (the Project Site) is developed with an estimated 1,796 square foot one-story commercial building and shared parking lot currently in use in the J Business zoning district.

The Applicant seeks to add a 1,450 square foot second story to the existing commercial building for a total building area of 3,246 square feet and to expand an existing parking lot to add 12 parking stalls (the Project). The parking lot expansion includes one asphalt stall in the front of the building in the existing asphalt lot and 11 crushed limestone stalls in the rear of the building.

Both locations for parking expansions require the removal of existing lawn area. The rear lot expansion also includes the replacement of existing asphalt with crushed limestone. The Applicant does not propose to clear existing natural vegetation, to retire sanitary credits, or to change to the Middle Country Road access point associated with the Project. No septic upgrade is proposed with the Project, though an area in the existing asphalt parking lot is designated for 50% expansion of the current sewage disposal system.

The Project will retain the existing conditions of 75% (0.33 acres) of cleared land and 25% (0.11 acres) to remain natural. The as of right sanitary flow for the Project Site is 132 gallons per day (gpd). The proposed building expansion will generate 194.76 gpd. Based on materials submitted, the Project exceeds the as of right sanitary flow.

The Applicant requires approval from the Central Pine Barrens Commission because the Project constitutes development and the Project Site is in the Core Preservation Area as defined in Article 57 of the Environmental Conservation Law, where development is to be prohibited or redirected absent Commission approval for a waiver from such generalized prohibition. Details and specifications concerning the

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Applicant's proposal are depicted on the Site Plan prepared by MJK Architect, PLLC last dated October 6, 2025. The Applicant is represented by Maciej "Matthew" Kazubowski of MJK Architect, PLLC.

II. The Act and the Commission

The New York State Legislature passed the Long Island Pine Barrens Protection Act (Act) and codified it in Article 57 of the Environmental Conservation Law (ECL), which was signed into law on July 13, 1993. The Act, among other things, created the Central Pine Barrens Joint Planning and Policy Commission (Commission), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area. In furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens Comprehensive Land Use Plan (the Plan), which was adopted on June 28, 1995.

ECL §57-0107 defines development to be the "performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the following uses shall be taken for the purposes of this article to involve development . . . (b) a material increase in the intensity of use of land or environmental impacts as a result thereof." ECL §57-0123 provides that "no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions" of the Plan and Environmental Conservation Law Section. The Project constitutes development as defined in the Act.

III. Materials Submitted to the Commission

On June 9, 2025, the Applicant submitted a Compelling Public Need Core Hardship Waiver Application prepared by MJK Architect, PLLC with a written project description, an Environmental Assessment Form Part I, ground photos, owner's affidavit, 1983 ingress egress agreement, survey prepared by Joshua R. Wicks PLS, and site plan dated March 20, 2025 prepared by MJK Architect, PLLC.

On June 24, 2025, Commission Staff sent a letter to the Applicant requesting the application be revised to an extraordinary hardship rather than a compelling public need, address all conditions set forth to establish an extraordinary hardship, provide the total areas of existing and proposed natural and cleared space, confirm if there is an increase in sanitary flow, and describe the proposal to satisfy the requirements of Article 6 of the Suffolk County Sanitary Code for non-residential development.

On July 9, 2025, the Applicant submitted an updated application packet with a written project description and site plan dated June 27, 2025 prepared by MJK Architect, PLLC. The most recent site plan, dated October 5, 2025, was received on October 7, 2025.

IV. Public Process

On September 17, 2025, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing and heard testimony from the Applicant. The decision deadline was extended from October 7, 2025 to the regular

Commission meeting on November 19, 2025. The hearing was closed and a one week written comment period held open until September 24. No comments were received at the hearing or during the extended comment period. A transcript of the hearing was received and distributed to the Commission and posted on the Commission website.

V. The Project Site and Study Area

The Project Site is on the south side of Middle Country Road and is flanked by other commercial buildings with parking lots to the immediate east and west. The Project Site is bound on the south by a 15-acre wooded parcel owned by Suffolk County that contributes to a larger block of contiguous open space in the Core Preservation Area of the Central Pine Barrens.

The Staff Report defined a Study Area which analyzed, in general, the land use and ownership of property within a one-half mile radius of the Project Site. The Study Area is bisected by the principal arterial east-west State Route 25, Middle Country Road, as classified by the New York State Department of Transportation. This section of Middle Country Road acts as the boundary separating the Compatible Growth Area to the north and the Core Preservation Area to the south.

Within the Study Area, there is a diverse mixture of land uses and zoning districts including industrial, institutional, commercial, vacant, low-, medium-, and high-density residential. A mix of town-, state-, and county-owned open space are distributed throughout the north and south sides of the Study Area with a significant amount of contiguous publicly-owned open space on the south side of Middle Country Road behind the Project Site.

VI. Environmental Review and Other Required Approvals

The Project is a Type II Action pursuant to 6 NYCRR Part 617.5(c)(9) of the State Environmental Quality Review Act (SEQRA). No further environmental review pursuant to the SEQRA regulations is required.

Other agencies with jurisdiction will need to review and issue permits and/or approvals for the Project to proceed. This includes the Town of Brookhaven for site plan and building permits and the Suffolk County Department of Health Services (SCDHS) for Article 6 of the Sanitary Code requirements. Mitigation measures related to the Project's excess sanitary flow may be required for SCDHS approval.

The Commission requested information from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) on whether the project would impact State listed historic resources. OPRHP replied by letter dated August 18, 2025 that, "no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project." Thus, the Project will not impact such resources.

VII. History of the Project Site and Prior Commission Decisions

On February 7, 1996, the Commission approved a Compatible Growth Area Application of Aroya and Brodbeck to develop a new 2,990 square foot medical office building in addition to the existing office building for a total of 4,512 square feet on a Project Site comprised of two parcels totaling

43,500 square feet with shared parking access. The Project Site included Klein's subject parcel, 200-402-1-18.12, and the neighboring parcel to the west, 200-402-1-16.2. The Project is shown on the site plan prepared by Fredrick Ercolino, last dated February 5, 1996. Both the site plan and 1996 resolution were in the Klein Staff Report presented at the September 17, 2025 public hearing held by the Commission.

The new 2,990 square foot medical office building was built on the westerly parcel identified as 200-402-1-16.2 and included clearing of natural vegetation and drainage improvements. The existing building on Klein's subject parcel, 200-402-1-18.12, remained as-is, though the existing parking lot received drainage improvements. No clearing of natural vegetation was included on this side of the Project Site. The 1996 Commission approval did not contemplate future growth of the new or existing buildings on the Project Site.

Please note the resolution incorrectly identifies the Project Site as 200-402-1-16.12 and 16.2, though the site plan and additional process documents correctly identify the Project Site as 200-402-1-18.12 and 16.2.

In 1993, upon the enactment of the Long Island Pine Barrens Preservation Act of 1993, the Project Site was placed into the Compatible Growth Area. In 2014, New York State modified the Act including boundary revisions, by which the Project Site was placed into the Core Preservation Area.

Development in the Core Preservation Area is prohibited unless a hardship exemption is granted by the Commission. The Applicant states the property was acquired in 2023 for commercial use and requires expansion to accommodate the growing number of staff.

The Commission has reviewed similar exemption requests in the past. These matters include both approvals and denials in the Commission decision history. Of five Core Preservation Area Extraordinary Hardship Waiver Approvals relating to commercial or office building and parking lot expansions, one project included a second-story addition to an existing building in the Core.

In 2010, the American Physical Society (APS) filed a second Core Hardship Waiver Application for a 16,274 square foot second-story expansion to the existing 31,062 square foot commercial office building on a five acre Project Site identified as 200-459-1-1.4. The first Core Hardship Waiver was granted on December 12, 1994 for an extension of the existing office building with a condition requiring future expansions to be accommodated vertically above the new addition.

The 2010 Project included clearing of 0.06 acres of natural vegetation (1.2% of the site) for 27 additional parking spaces and reconfiguration of the parking lot access points. The Project also included the installation of a new septic system that exceeded the as of right flow by 985.5 gpd.

The Commission granted the waiver on July 21, 2010 with the finding that "APS has designed the proposal in harmony with the project site's physical surroundings and boundary constraints, with minimal disturbance to existing natural vegetation to the greatest extent possible, and in accordance with the condition imposed by the Commission in its 1994 Waiver resolution to accommodate future expansions of the building on a vertical plane rather than expanding the existing building laterally."

Condition four of the approval required the purchase and retirement of a minimum of 3.29 sanitary wastewater credits at the SCDHS to comply with Suffolk County Sanitary Code Article 6. Condition seven of the approval required restoration of 0.41 acres of previously disturbed area and a Declaration of Covenants and Restrictions to protect a minimum of the restored site and existing natural area for a total of 1.96 acres.

VIII. Commission Review of the Act's Extraordinary Hardship Waiver Criteria and Applicant's Materials

In reviewing a Core Preservation Area Extraordinary Hardship Waiver Application, the Commission is required to consider the criteria set forth in ECL §57-0121(10)(a) and (c) to determine whether an applicant has established the existence of extraordinary hardship as distinguished from a mere inconvenience, whether the requested relief is consistent with the purposes, provisions of the Act, and if granted, would not result in a substantial impairment of the resources of the Central Pine Barrens area. An applicant demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this article, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property under certain conditions.

The Commission has considered the application, the Staff Report and Exhibits, transcripts of the hearings, and its prior decisions and finds that Klein has demonstrated that an extraordinary hardship exists.

The Applicant purchased the property in 2023 to establish a computer-based trading business and explained that a hardship is imposed by the existing 1,796 square foot commercial building due to the inability to accommodate the full staff of 26 in-person employees.

Based on legal office occupancy of 100 square feet per person, the current space can accommodate a maximum of 17 workers. The nature of the business requires in-person attendance due to “transactions confidentiality” and a rotating schedule is currently used for staffing the space. The Applicant expressed that limited office space restricts current business activity and future economic growth, thus hindering beneficial uses of the property.

The Applicant states the Project's proposal for a second story addition does not affect neighboring properties. The Commission finds the vertical expansion of the existing building, which existed before the Act, is designed in harmony with the site's physical boundary constraints and results in no disturbance to the existing natural vegetation.

The Applicant states the inability to have a beneficial use results from unique circumstances peculiar to the subject property which are not the result of any action or inaction by the Applicant or the owner or their predecessors in title including any transfer of contiguous lands which were in common ownership on or after June 1, 1993. The Commission finds that the Applicant has demonstrated such criteria.

The Applicant states the Project will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire,

endanger public safety or result in substantial impairment of the resources of the Core Preservation Area. The Commission finds the Project's lack of disturbance to natural vegetation and use of already cleared areas demonstrates these criteria.

The Commission finds the waiver is consistent with the purposes, objectives or the general spirit and intent of Article 57 as the Project Site was developed prior to the Act and current plans preserve existing natural vegetation. The Applicant is receptive to additional site improvements if required by the Town, as noted in the public hearing transcript. The excess sanitary flow as a result of the building expansion requires mitigation at the county level.

The Commission finds the waiver is the minimum relief necessary to relieve the extraordinary hardship on behalf of the Applicant to meet their needs and minimize adverse impacts on the Project Site in the Core Preservation Area to the greatest extent practicable.

The Commission hereby determines the Hardship Waiver application, as submitted, satisfies the criteria for a Core Preservation Area Extraordinary Hardship Waiver pursuant to New York State ECL Article 57 §57-0121(10) for the reasons set forth in this resolution.

IX. Conclusion

Based on the foregoing and upon review of the application, the Commission hereby grants the waiver requested by the Applicant. The Waiver is granted only for this specific project. No other uses or development of the site in the J Business zoning category is permitted.

Aside from this Waiver, the Applicant must obtain any and all other permits and approvals from other agencies including the Town of Brookhaven and SCDHS.

A condition of approval requires the Applicant to record a Declaration of Covenants and Restrictions (C&Rs) on the property to protect 0.11 acre of the property and barring the construction of any other structure(s) and uses on the property.

The Klein Core Preservation Area Hardship Waiver is approved, as per the site plan prepared by MJK Architect PLLC, last dated October 6, 2025, subject to conditions including:

1. The Waiver shall be valid for a period of five (5) years from the date of approval, and a new application will be required after 5 years even for the same project and survey.
2. The Waiver is granted only for this specific Project. Implement the Project as depicted in the site plan survey prepared by MJK Architect PLLC, last dated October 6, 2025.
3. Submit any updates in the Project if they occur. No substantial changes may occur without Commission approval. If any changes occur in the Project, the Applicant must notify the Commission and submit an amended application, subject to review and approval.
4. The Applicant must obtain additional permits and approvals, as required by law, prior to commencement of activity related to the Project including Town of Brookhaven and

Suffolk County Department of Health Services (SCDHS) review and approval, and any other approvals and permit requirements that apply to the Project.

5. The Applicant must obtain SCDHS approval and forward a copy to the Commission prior to site disturbance, including proof of compliance related to excess as of right sanitary flow and Suffolk County Sanitary Code Article 6. Pursuant to Section 6.5.6 of the Plan, Pine Barrens Credits may not be redeemed in the Core, therefore they cannot be used to satisfy SCDHS sanitary requirements if required by SCDHS for this Project.
6. This site is not eligible for a credit allocation in the Pine Barrens Credit Program.
7. No clearing or disturbance of trees or other natural vegetation present on the Project Site shall occur, as confirmed by the Applicant. Install snow fencing along the tree line and natural vegetation to protect the natural area during construction and remove snow fencing post-construction.
8. The Applicant must submit a copy of the Declaration of Covenants and Restrictions (C&Rs) granted to the Town to include the protection of the Project Site's existing natural vegetation, 0.11 acre. Ensure it includes no disturbance to natural vegetation for the Project and does not permit the construction of any other structures and uses on the property.
9. Within six months of completion of the Project and issuance of a Certificate of Occupancy, the Applicant shall submit an As-Built Survey for the Commission's file record.

Klein Core Preservation Area Hardship Waiver

Town of Brookhaven, SCTM # 200-402-1-18.12

Decision to Approve

Record of Motion:

Motion by: Mr. Charters

Seconded by: Ms. Juengst

In Favor: 4

Opposed: 0

Abstention: 0

cc: Town of Brookhaven Department of Planning, Environmental, and Land Management
Suffolk County Department of Health Services
MJK Architect, PLLC

